

### Remarks

The Office Action restricted this case and identified the following inventions:

- I. Claims 1-14, and
- II. Claims 15-20.

Claims 15-20 are herein cancelled without prejudice to applicants' right to file a divisional application seeking claims of that scope. Applicants appreciate the withdrawal of the election of species requirement for claims 1-14.

Claims 1, 6, 11 and 13 were objected to based on informalities. The Examiner is respectfully thanked for the careful consideration of this case as evidenced by the clerical errors detected in this objection. Claims 10 and 14 were rejected under 35 U.S.C. Section 112, second paragraph. Claims 1, 6, 10, 11 and 13 were amended herein to render the rejections and objections moot. These amendments do not change the scope of these claims as they merely correct clerical errors and/or make explicit what was already inherent in the claim.

Claims 1, 3, 8, 9 and 13 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Nakao et al. (U.S. Pat. No. 5,156,609) in view of Gauderer et al. (U.S. Pat. No. 6,361,540) with reference to Exhibit A.

Claim 2 is rejected under 35 U.S.C. Section 103 (a) as being unpatentable over Nakao et al. (U.S. Pat. No. 5,156,609) in view of Gauderer et al. (U.S. Pat. No. 6,361,540) with reference to Exhibit A., and further in view of *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 4, 5, 7 and 12 were objected to as being allowable if rewritten in independent form. Claims 6 and 11 were indicated as being allowable if rewritten and if the rewritten to overcome the objection. Claims 10 and 14 were indicated as being allowable if rewritten to overcome the rejection. The Examiner is thanked for indicating allowable subject matter in this case. Claims 4, 10, 11, 12 and 14 are rewritten in independent form and are believed to be in condition for allowance.

With respect to the rejection of claims 1, 3, 8, 9 and 13, the Office Action described, in great detail, the application of the references to the claims. This detailed explanation is very helpful and much appreciated. However, applicants respectfully traverse the rejection.

Nakao et al. discloses a laparoscopic or endoscopic stapling device. The device does not disclose a foreign body retrieval device at all. The device includes a staple 91 that is placed near an opening 102 in tissue 100.

Gauderer et al. does not cure the deficiencies of Nakao et al. Gauderer et al. discloses an apparatus for removal of coins within the esophagus. A procedure and device for removing a coin from a patient's esophagus is substantially different than a procedure and device for placing a staple in a patient. As a result, it is respectfully submitted that one of ordinary skill in the art would not look to the teachings of an esophageal coin remover to modify a staple inserter. Thus, there is no motivation, incentive, reason or suggestion to combine the teachings of Nakao et al. and Gauderer et al. Thus, the rejection of claim 1 should be withdrawn.

With respect to claim 2, the rejection should be withdrawn for the reasons set forth above. Claim 2 also sets forth structural limitations that even further distances claim 2 from the art. Claim 2 is directed to a surgical device suitable for urological procedures. There is nothing in Nakao et al. and Gauderer et al. that would suggest the limitations of claim 2. Gauderer et al. teaches in the opposite direction. Column 5, lines 13-17 disclose pushing an object into the lower esophagus so that it travels through the intestinal tract. In contrast, in a urological procedure, the undersigned attorney believes that it is unlikely that any surgeon would push an object from the urethra/bladder region into the ureters. Thus, Gauderer teaches directly away from any combination that would arrive at the present invention. As a result, claim 2 is allowable for this reason as well.

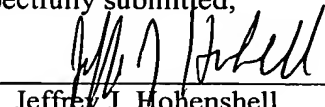
This amendment adds three independent claims over the allotted three. Please charge the fee for the submission of these three additional independent claims to Deposit Account No 501921. Please charge any other required fee for submission of this amendment to Deposit Account No 501921.

If the Examiner believes a teleconference would be useful or helpful in progressing prosecution of this case, the Examiner is invited to telephone the undersigned attorney at 952-930-6135.

Registration Number 34,109	Telephone Number 952 930-6135
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Respectfully submitted,

By

  
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